IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

J U D G M E N T

BHAL SINGH (SINCE DECEASED) REPRESENTATED BY HIS HEIRS:
1/1Om Pati Devi widow Bhal Singh
1/2.Smt.Babita w/o Ved Prakash
and daughter of Bhal Singh
1/3.Pawan Kumar s/o Bhal Singh
1/4 .Suresh Kumari d/o Bhal Singh
1/5 .Jogendra s/o Bhal Singh
No.4 and 5 are minors through
their Natural Guardian Smt.Om Pati Devi.
All by caste Jat R/o Sheopura
Tehsil Rajgarh District Churu.

VS STATE OF RAJASTHAN

S.B.CRMINAL APPEAL NO.295/98
UNDER SECTION 374(2) CR.P.C.
AGAINST THE JUDGMENT DATED
3.4.98 IN A.C.D.CASE NO.36/97(9/90
PASSED BY SHRI JASWANT SINGH
RHJS SESSIONS JUDGE BIKANER.

.....

Date of Judgment:- February 1,2007

PRESENT
HON'BLE MR.JUSTICE CHATRA RAM JAT

Mr.G.R.Punia, counsel for the appellants.
Mr.L.R.Upadhayay, Public Prosecutor.

BY THE COURT -

This appeal is directed against the judgment and order dated 3.4.1998 passed by the Sessions Judge, Anti Corruption Cases, Bikaner in A.C.D.Case No.36/97 (9/90)

whereby the charges under Section 7 and 13(1(d) read with Section13(2) of the Anti Corruption Act, was proved against appellant,Bhal Singh, and he was declared guilty for the same. Thereafter he was heard on the point of sentence and was convicted and sentenced for six month rigorous imprisonment under Section 7 and fine of Rs.500/- was also imposed. He was further convicted and sentenced for offence under section 13(2) for a period of one years' rigorous imprisonment and a fine of Rs.500/- and in default of payment of fine,he has to go for one months rigorous imprisonment.

2. Prosecution case is as under :

On 22.9.89 Sukh Deo Singh (P.W.1) went to Anti Corruption Department, Sri Gangangar, and presented a complaint Ex.P.1 to the Additional Superintendent of Police- Shri Radhey Shyam Sharma (P.W.9) wherein he stated that he is resident of village Rampura (Narainpura) and doing agriculture work in village 5 I.D.G. of Rajasthan which is adjacent to Punjab.Village of Sukhdeo Singh is on boarder of Rajasthan and Punjab and in between there is bridge over the canal and he used to come and go and Bhal singh is R.A.C.guard on this side and demanding bribe for coming and going. He also stated that on that very day in the morning about 8-9 A.M. when he brought one bufallow and Pada in tractor and crossed the

bridge towards Rajasthan side of Narainpura village , one the corner he was intercepted and demanded money ,then he said that when he cut four rounds of mustard crop then he will pay Rs.6-/ at the rate of Rs.15/- per round and Rs.10/- of this round, in total Rs.70/- was to be paid. Sukh Deo Singh requested that he did not want to pay this illegal amount and wants to caught the culprit red handed on spot. On receiving this complaint, Shri Radhey Shuam Sharma, after due enquiry , arranged a trap and took signatures and two witnesses Jai Singh, Susheel Kumar was called for the purpose. In presence of witnesses Rs.70/- (five notes of Rs 10/- and one Rs.20/- currency note) were taken and noted its number then put signs over currency notes,then phenolphthalein powder was spread over these currency notes by Ram Gopal L.C. and the same were given to Sukhdeo Singh complainant. He was instructed that after giving the currency notes to RAC guard, pass signal by putting hand on turban or tell nearby going. Both witnesses were directed to remain near complainant and try to hear the conversation. When fingers of Ram Gopal L.C. was washed out the water became pink and solution was thrown and empty bottle of phenolphthalein was put in record.Hands of Ramgopal were washed by soap and requisition of additional force from local police was sent and at 4.50 they started to boarder check post 85 RD link channel. At 7.15 P.M. from Dhani of Ami Lal

Bishnoi , complainant and police started with tractor PBF 181 loaded with mustard towards bridge for crossing channel . In the tractor Hansraj, Ram Kumar Bishnoi and complainant was therein and when reached near about 200 yards , then complainant said to Radhey Shyam that post is about 200 yards and when they will with him then there will be suspicion in the mind of RAC guard. Jeep and checking party stayed there.Complainant moved with tractor and reached near Bahal Singh (Bhal Singh) and stopped the tractor after giving bribe. At about 8 P.M . complainant gave signal to trap party and on receiving the signal, trap party reached to spot and gave identification and asked the name of bribe taker.On asking he said his name is Bhal Singh (Bhal Singh) LC 0802 RAC IV th battalion. On asking about bribe of Rs.70/- from complainant, he refused to take the bribe and one thing rolling from left pocket of the pant was fall down on earth. Sukh Deo Singh and Hansraj informed that Bhal Singh took Rs.70/- and put the same in left pocket of pant then allow to across the tractor from bridge. Thereafter fingers of Bhal Singh was washed in Sodium carbonate solution and solution left hand became ' matmela' and right hand finger's solution become pink. Solution was kept in two bottles and were sealed. In presence of motbirs, money was recovered near feet of Bhal Singh and on checking the same numbers of currency notes were found. Pant of Bhal Singh

were taken in possession with bundle of 'biri' and match box which also dipped in sodium carbonate solution then it become 'matmela' and reverse pocket of the pant was also dipped in the sodium solution which turned into pink, the same were kept in sealed bottle for chemical examination. Thereafter usual fards were prepared and sent to head office for registering F.I.R. which is Ex.P.13.

After complying with all formalities and investigation, Exp-12 charge sheet was filed for offence under Section 7 and 13(1)(d) read with section 13(2) and accused denied the charges and claimed for trial.

Prosecution in support of its case examined Sukh Deo Singh P.W. 1, Sushil Kumar P.W.2 Jai Singh P.W. 3, Hansraj P.W.4, Sudarshan Kumar P.W.5 Laxman Singh P.W.6, Ram Gopal P.W.7,Gauri Shankar P.W.8, Radhey Shyam Sharma P.W.9, Hazari Lal P.W.10, Banney Singh P.W. 11, and Nawal Kishore P.W.12. Thereafter statement of accused appellant Bhal Singh under section 313 Cr.P.C. was recorded and stated that he caught dry wooden loaded truck of Suk Deo Singh so he falsely implicated him. After hearing the counsel for the parties,learned Sessions Judger convicted and sentenced the accused appellant. During the pendency of appeal, accused appellant Bhal Singh

expired on 5.10.2000. Thereafter an application under section 394 Cr.P.C was filed to take on record legal heirs of Bhal Singh and that application was allowed vide order dated 22.11.2000. Hence, this appeal is prosecuted by his legal heirs as mentioned hereinabove.

Heard learned counsel for the parties and perused the judgment of the Sessions Judge and scanned the record of the trial of the case.

Learned counsel for the appellant vehemently assailed the finding of learned trial Judge on the ground that in bribe case the complainant and two motbirs must support the prosecution story that demand was made by the appellant and money was received by the appellant and recovery made from the appellant but in this case the mobirs witnesses P.W.2 Sushil Kumar, P.W.3 Jai Singh have been declared hostile along with P.W.11 Banney Singh and the remaining important witness P.W.1 Sukhdeo Singh complainant (decoy) ,P.W 4 Hansraj,PW 5 Laxman Singh, P.W.9 Radhey Shyam Sharma's evidence cannot be trusthworthy without corroboration of ind pendant witnesses as they are highly interested and partisan witnesses because of getting success of trap,hence, evidence must be tested in the same way as that of any interested witnesses and

in this case, thus, there is no independent corroboration. Learned counsel also contended that as per evidence of P.W.4 Hansraj, P.W.5 Laxman Singh there was dark whereas P.W.9 Radhey Shyam Sharma stated that on the spot there were electrical pole s and there was sufficient light of electricity from electric pole so looking to this important contradiction between these witnesses and without corroboration , this case is of doubtful nature and thus the evidence against the appellant cannot be reliable as per (i) AIR 1974 SC 218 Darshan Lal vs The Delhi Administration,, (ii) 1997 Cr.L.R (Raj) 330 Laxmi Narain Goyal vs State of Rajasthan, and (iii)Cr.L.R.(Raj) 1981-page 78 Narain Ram vs The State of Rajasthan . In view of this, the prosecution has failed to prove guilt beyond reasonable doubt and the benefit of doubt must be given to the appellant and thus, he may be acquitted from the charges levelled against him.

Per contra, learned Public Prosecutor supported the impugned findings of the learned Sessions Judge and urged that the appellant was rightly convicted and sentenced so appeal must be dismissed.

Having closely scanned the evidence on record for

demand, acceptance and recovery of bribe money cannot be considered trustworthy and reliable because of the enmity between the accused appellant and complaint P.W.1 Sukhdeo Singh,P.W.2 Jai Singh, and P.W.11 Banney Singh being hostile witnesses and major contradiction for darkness between the statement of P.W.4 Hansraj. P.W.5 Laxman Singh and P.W.9 Radhey Shyam Sharma and highly intrested for the success of trap. P.W. 1 Sukhdeo Singh, P.W.4 Hansraj , P.W.5 Laxman Singh and P.W.9 Radhey Shyam Sharma. In other words story of recovery etc shows that it is mith and it cannot be accepted beyond doubt and thus in my view that evidence produced by the prosecution is not trusthworthy for drawing the inference that appellant was guilty . The circumstances only creates suspicion against the appellant which cannot be a substitute for a proof. Learned trial court was not right in considering the evidence as reliable and trusthworthy, and thus, committed illegality in convicting and sentencing the appellant. Hence, this appeal deserves to be accepted.

In the result, for the reasons and discussions stated hereinabove, this appeal is allowed, the judgment of conviction & sentence passed by the learned Sessions Judge, Anti Corruption Bikaner dated 3.4.1998 is set aside and accused

appellant is acquitted of the offences under section 7 and section13(1)(d) read with section 13(2) of the Prevention of Corruption Act,1988.

(CHATRA RAM JAT)9J

CKThanvi